

23 VAC 10-20. GENERAL PROVISIONS APPLICABLE TO ALL TAXES
ADMINISTERED BY THE DEPARTMENT OF TAXATION

~~23 VAC 10-20-40. Collection of taxes accrued prior to repeal.~~

~~When statutory provisions which impose a tax are repealed all taxes which were due and payable prior to the effective date of the repeal remain due and payable. The Department may audit returns and assess additional taxes for the appropriate period specified in Va. Code §58.1-104.~~

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~~23 VAC 10-20-50. Payment of tax by bad check.~~

~~A. In general. If any check tendered for any tax administered by the Department is not paid by the bank on which it is drawn, the taxpayer for whom the check was tendered shall remain liable for the payment of the tax the same as if such check had not been tendered. Penalties for failure to pay the tax may be imposed.~~

~~B. Penalty. A penalty of twenty-five dollars will be assessed against the taxpayer if the taxpayer fails to pay the amount shown on the face of the check within five days after notice of nonpayment by the bank has been mailed by certified or registered mail to the taxpayer. Such penalty will be in addition to any and all other penalties provided by law.~~

~~C. Bank. For the purpose of this section and any other section of Title 58.1 of the Virginia Code referring to bad checks, "bank" means any financial institution which permits its customers to write negotiable instruments drawn upon it including, but not limited to, commercial banks, savings banks, savings and loan associations, credit unions, and money market funds.~~

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~~23 VAC 10-20-70. Overcollection of tax.~~

~~A. In general.~~

~~1. Any person responsible for collecting Retail Sales Tax, Watercraft Sales Tax, Aircraft Sales Tax, Motor Vehicle Fuel Sales Tax (in certain transportation districts), who overcollects any such tax and fails to account for and pay such overcollection to the department shall be liable for the overcollection and a penalty of 25% of such overcollection.~~

~~2. In the case of the sales taxes, any overcollection must be accounted for and paid to the department when the regular monthly or quarterly return is due for the period in which the overcollection occurred.~~

~~3. Any person who has been assessed a penalty under this section and who believes he has good cause for failing to account for and pay the overcollection to the department may petition the Tax Commissioner to waive the penalty by following the procedures for submitting an offer in compromise under 23 VAC 10-20-90.~~

~~B. Sales taxes.~~

~~1. The term "overcollection" means, in respect to the sales taxes, an amount collected at a rate in excess of the proper rate and which has not been refunded or credited to the consumer.~~

~~2. Dealers who use the bracket method to calculate the sales tax may find that their accounting records show slightly more sales tax has been collected than is due when~~

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~~the tax is calculated on gross sales. Such excess is not an overcollection for purposes of this section. See Sales and Use Tax Regulations for an explanation of the bracket method.~~

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~~23 VAC 10-20-100. Period of limitations.~~

~~Except as provided by Va. Code §§58.1-312 (relating to income tax) and 58.1-634 (relating to retail sales and use tax), any tax administered by the department shall be assessed within three years of the date on which such taxes became due and payable. A tax may be assessed within six years of the date the tax became due and payable in the case of a false or fraudulent return with the intent to evade any tax administered by the department or a failure to file a return. For further information see 23 VAC 10-20-150.~~

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~~23 VAC 10-20-120. Collection out of estate in hands of or debts due by third party.~~

~~1. If an assessment of any tax, penalty and interest remains unpaid thirty days after the assessment, or if there has been an immediate assessment of income or sales tax where collection would be jeopardized by delay pursuant to Va. Code §§58.1-313 (relating to income tax) or 58.1-631 (relating to retail sales and use tax), the Tax Commissioner may apply in writing to any person who is indebted to the taxpayer or who has in his possession or control property or estate belonging to the taxpayer and require payment of the assessment out of the debt or estate of the taxpayer.~~

~~2. The assessment of taxes, penalties and interest shall constitute a lien on the debt or estate due the taxpayer from the time the application is received by the person applied to.~~

~~3. For each application served, the person applied to shall be entitled to a fee of twenty dollars which shall constitute a charge or credit against the debt to or estate of the taxpayer.~~

~~4. As soon as practicable after service of the application, but in no event later than 10 days after service, the Tax Commissioner shall mail a copy of the application to the taxpayer with a notice informing him of the remedies provided in Chapter 18 of Title 58.1 of the Code of Virginia.~~

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~~23 VAC 10-20-150. Assessment of omitted taxes by the Department of Taxation.~~

~~A. In general.~~

~~1. If any person fails to make a proper return or fails to pay in full any proper tax administered by the Department such person shall be assessed the proper tax, penalties and interest.~~

~~2. In addition to the proper tax a penalty for failure to file a return will be added if such a penalty is prescribed by law.~~

~~3. In addition to the proper tax a penalty for failure to pay the tax shall be added.~~

~~a. The penalty for failure to pay the tax shall be the amount prescribed by law for the tax. If no penalty is prescribed for failure to pay the particular tax the penalty shall be five percent of the unpaid tax.~~

~~b. If the failure to pay the tax was due to fraud a penalty of 100 percent of the unpaid tax shall be added to the proper tax in lieu of the 5 percent or other penalty prescribed for failure to pay the tax.~~

~~4. In addition to the proper tax, interest on the outstanding tax and penalty shall be added at the rate established under Va. Code §58.1-15 for the period between the due date and the date of assessment.~~

~~5. Upon assessment the Department will send a written notice of assessment to the taxpayer. If the full amount of the assessment of taxes, penalties and interest is not paid~~

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~~to the Department within thirty days interest shall accrue on the assessment at the rate established under Va. Code §58.1-15 from the date of the assessment until payment.~~

~~B. Period for assessing taxes. The taxes imposed by Title 58.1 which are administered by the Department shall be assessed in accordance with this section and Va. Code §58.1-104 (relating to the general period of limitations) as follows:~~

- ~~1. If a return is filed on or before the last day prescribed by law for filing a return, including any extensions that may have been granted, the tax shall be assessed within three years of the date the tax was due and payable.~~
- ~~2. If the taxpayer fails to file a return on or before the last day prescribed by law, including any extensions that may have been granted, the tax may be assessed at any time within six years of the date the tax was due and payable.~~
- ~~3. If a false or fraudulent return is filed with intent to evade the payment of tax, the tax may be assessed at any time but in no event more than six years after the tax was due and payable.~~
- ~~4. If the tax owed is an income tax imposed under Chapter 3 of Title 58.1 there are additional exceptions to the general three or six year periods set forth above. See Va. Code §58.1-312 and the regulations thereunder.~~
- ~~5. See Va. Code §58.1-634 for the period of limitations applicable to the Retail Sales and Use Tax.~~